IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 206, 206A & 206B of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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COMMISSIONER OF INCOME-TAX

Versus

GUJARAT CARBON LIMITED

Appearance:

1. INCOME TAX REFERENCE No. 206 of 1992

MR MANISH R BHATT for Petitioner No. 1

MR JP SHAH for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE K.A.PUJ

Date of decision: 17/07/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In these references at the instance of the revenue, the following common questions are referred for our opinion in respect of assessment years 1981-82 to 1983-84:-

"Whether, the Appellate Tribunal is right in law and on facts in treating the amounts paid for royalty to collaborators as revenue expenditure?"

2. We have heard Mr Manish R Bhatt, learned Sr. Standing Counsel for the revenue and Mr Manish J Shah, learned counsel for the respondent - assessee.

3. At the hearing of this reference, our attention is invited to the decision dated 5-12-2001 of this Court in the case of this very assessee reported in (2002) 254 ITR 294 wherein this Court had an opportunity to consider the same question for the assessment year 1980-81. After considering all the relevant material and the decisions of the Apex Court, this Court answered the question in favour of the assessee and held that amount paid for royalties to collaborators is revenue expenditure and accordingly answered the question in favour of the assessee.

Following the said decision, our answer to the question referred is in the affirmative i.e. in favour of the assessee and against the revenue.

4. The References accordingly stand disposed of with no order as to costs.

(M.S. Shah,J) (K.A. Puj,J)

zgs/-